

ESTTA Tracking number: **ESTTA703092**Filing date: **10/19/2015**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Doug Duell		
Entity	Individual	Citizenship	UNITED STATES
Address	4000 Division Street Evansville, IN 47715 UNITED STATES		

Correspondence information	Gary K. Price 700 S. Green River Rd. Evansville, IN 47715 UNITED STATES gprice@tbsblaw.com Phone:8124798721
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Registration Subject to Cancellation

Registration No	4707092	Registration date	03/24/2015
Registrant	Nostalgia Super Stock, Inc. N87 W28288 Scott Lane Hartland, WI 53029 UNITED STATES		

Goods/Services Subject to Cancellation

Class 035. First Use: 1989/00/00 First Use In Commerce: 1989/00/00 All goods and services in the class are cancelled, namely: Association services, namely, promoting the history, interest and awareness of automobiles
Class 041. First Use: 1989/00/00 First Use In Commerce: 1989/00/00 All goods and services in the class are cancelled, namely: Educational, entertainment and historical archival services, namely, providing displays and exhibits in the field of automobiles and entertainment in the nature of automobile races; providing recognition and incentives by way of awards to demonstrate excellence and to promote interests and awareness in the field of automobiles

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	The registered mark is a common name for a particular event in the field of automobiles and automobile racing, and relates to the type of product, namely events that feature 1960s car models rather than the source of the product.

Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	NSS		
Goods/Services	Association services, namely, promoting the history, interest and awareness of automobiles Educational, entertainment and historical archival services, namely, providing displays and exhibits in the field of automobiles and entertainment in the nature of automobile races; providing recognition and incentives by way of awards to demonstrate excellence and to promote interests and awareness in the field of automobiles		

Attachments	DOC008.pdf(146045 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Gary K. Price/
Name	Gary K. Price
Date	10/19/2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Doug Duell,

Petitioner,

v.

Nostalgia Super Stock, Inc.,

Registrant.

Mark: **NSS**

Registration No. 4,707,092

Registration Date: March 24, 2015

BOX TTAB – FEE

Commissioner for Trademarks

P.O. Box 1451

Alexandria, VA 22313-14513

GROUND FOR CANCELLATION

1. Doug Duell (hereinafter "Petitioner"), an individual residing in the City of Evansville, Vanderburgh County, Indiana, believes that he is or will be damaged by the registration for the mark NSS and hereby opposes same.
2. On information and belief, Nostalgia Super Stock, Inc. (hereinafter "Registrant"), is a non-profit corporation duly organized and existing under the laws of Illinois, and having a place of business of P.O. Box 680, Merton, Wisconsin 53056.

As grounds for cancellation, Petitioner alleges the following:

3. On March 24, 2015, the United States Patent and Trademark Office (USPTO) granted Registrant's application to register the mark NSS for use on or in connection with "promoting the history, interest and awareness of automobiles," in international class IC 35, and for "providing displays and exhibits in the field of automobiles and entertainment in the nature of automobile races; providing recognition and incentives by way of awards to demonstrate excellence and to promote interest and awareness in the field of automobiles" in international class IC 41.

4. The mark NSS is an abbreviation for “Nostalgia Super Stock.” Wikipedia defines “Nostalgia Super Stock” as

“a popular, and among the fastest growing forms of drag racing. The Class recreates the style of drag racing very popular in the 1960s with drivers like Ronnie Sox, Dick Landy, Butch Leal, and Mickey Thompson.

NSS roots go back to the early 1980s when retired Super Stock racers Dave Duell, Alren Vanke and others started exhibition racing 1960s style Super Stock at Nostalgia racing events. The popularity of the class evolved into a category of drag racing with hundreds of cars and drivers competing in Championship series, and large Nostalgia Drag Racing events.

The spirit of NSS drag racing has the same models of cars that raced Super Stock between 1959 and 1969-but with certain safety equipment updates. The cubic inch displacement of the engines in Nostalgia Super Stock is not a tech item, and motors as large as 620 cubic inches (10 L) has these cars running as quick as 8-seconds in the quarter mile, at speeds over 150 miles per hour (241 km/h).

While there are different series, clubs, and events running NSS-the rules most run were developed and agreed by representatives from most of the clubs, and Universal at most NSS events.

The largest annual NSS Racer is the Dave Duell¹ Classic (named in honor of Dave Duell), which has seen as many as ninety (90) Nostalgia Super Stock cars compete in what is considered the Class National event. The event is currently run in the fall at Beach Bend Raceway in Bowling Green, KY. While it is run in conjunction with a NMCA event, it is administered by Dave’s son, Doug.”

5. As referenced in Wikipedia, there are a number of clubs or organizations throughout the United States that use and promote the name NSS in association with automobiles and entertainment in the nature of automobile races, as well as in

¹ Petitioner, Doug Duell, is the son of Dave Duell.

association with promoting the history, interest and awareness of drag racing and certain models of cars that raced between 1959 and 1969.

6. The name NSS has been used generally in the field of automobiles and entertainment for an extensive period of time.
7. Petitioner is a member of the National Muscle Car Association (NMCA), located in Santa Anna, California, which has over 2000 members. NMCA promotes and sponsors racing events all over the United States, which racing events include NSS events with full-sized 1960s model cars.
8. NMCA has been sponsoring and promoting NSS events since as early as 2002.
9. NMCA is not associated with Registrant.
10. Based upon information and belief, Victory NSS Point Series is another organization that promotes and sponsors events using the name NSS, primarily in the states of Missouri, Iowa, and Illinois. Victory NSS Point Series has been promoting and sponsoring NSS events for at least eight (8) years.
11. Victory NSS Point Series is not associated with Registrant.
12. Based upon information and belief, 422 All-Stars is another organization that sponsors events using the name NSS, primarily on the east coast of the United States, and has been promoting and sponsoring NSS events for at least fifteen (15) years.
13. 422 All-Stars is not associated with Registrant.
14. Based upon information and belief, SHRA Association is another organization that promotes and sponsors NSS events in or around the state of Texas.
15. SHRA Association is not associated with Registrant.
16. Registrant is another organization that promotes and sponsors events using the name NSS primarily in or around the state of Illinois.
17. There are other clubs and organizations in the US that use the name NSS in association with automobiles and automobile racing events they sponsor.
18. While the many clubs or organizations throughout the United States that sponsor NSS events are not associated with one another, they remain in communications with one another, and upon information and belief, they each follow the rules developed many years ago that are now universal at most NSS events, namely, the event relates to racing car models between the years 1959 and 1969.

19. It is common for members of one club or organization to cross-over and participate in NSS events sponsored by other organizations. In fact, members of Registrant are aware of this and have participated in NSS events sponsored by other organizations, including organizations listed above.

20. It is clear that the term NSS relates to the type of product, namely events that feature 1960s car models, rather than the source of the product.

21. "Generic" terms are terms that the relevant purchasing public understand primarily as the common or class name for the goods or services. *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 57 USPQ2d 1807, 1811 (Fed. Cir. 2001); *In re Am. Fertility Soc'y*, 188 F.3d 1341, 1346, 51 USPQ2d 1832, 1836 (Fed. Cir. 1999). Generic terms are incapable of functioning as registrable trademarks denoting source, and are not registrable on the Principal Register under §2(f) or on the Supplemental Register. TMEP 1209.01(c)

22. The relevant consuming public recognize NSS as the common name for a particular class event in the field of automobiles and automobile racing, namely, an event concentrated on car models between the years 1959 and 1969.

23. The term NSS is generic and incapable of functioning as a registrable trademark and should therefore be canceled.

WHEREFORE, Petitioner prays that Registrant's Registration No. 4,707,092 be cancelled and that this cancellation be sustained in favor of Petitioner.

Respectfully submitted,

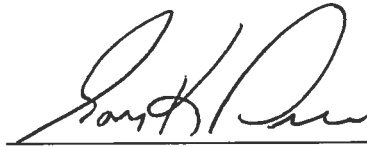
TERRELL, BAUGH, SALMON & BORN, LLP

By: 

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ATTORNEY FOR PETITIONER, DOUG DUELL

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Grounds for Cancellation was mailed first-class mail postage prepaid to Nostalgia Super Stock, Inc., P.O. Box 680, Merton, Wisconsin 53056 this 19 day of October, 2015.

A handwritten signature in black ink, appearing to read "Gary K. Price", written over a horizontal line.

Gary K. Price
Attorney for Petitioner, Doug Duell